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Supreme Court, U.S.
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No. 03-1152

IN THE

Supreme Court of the United States

JUNE JAMES,

Petitioner,

v.

RICE UNIVERSITY, KRISTI SUTTERMAN and KYLE CAVANAUGH,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Fifth Circuit followed its prior holdings in affirming the District Court's denial of Petitioner's third Rule 60(b) Motion.

CORPORATE DISCLOSURE STATEMENT

Respondent Rice University is a non-profit corporation incorporated under the Texas Non-Profit Corporations Act. It does not have a parent corporation and there is no publicly held company that owns more than 10% of its stock.

Pursuant to Supreme Court Rule 15.2, Respondent Rice University addresses the following perceived misstatements of fact and law in the petition that bear on what issues properly would be before the Court if certiorari were granted:

1. ***Misstatements of Fact:***

James misstates that Rice filed its Motion for Sanctions "because of [James'] counsel's neglect of the case and gross malpractice . . ." (Pet. at 2.)[1] Rice filed its Motion for Sanctions because James "has not been diligent in prosecuting her lawsuit." (R. at 53-49.)[2]

James misstates that "all facts stated herein are fully supported by the record . . ." (Pet. at 3, Fn. 1.) There is no support in the record for James' statements (i) that her attorney filed a notice of appeal in December 2002 "unbeknownst to Petitioner . . ." (Pet. at 2), or (ii) that in November of 2002 Kelly informed James "that Kelly would get her case reinstated." (Pet. at 4.)

2. ***Misstatements of Law:***

James misstates that the district court's denial of her Rule 60(b) motion "is contrary to case law from the Fifth

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1. The petition for writ of certiorari in this case is referred to as "Pet. at __." References to documents attached to the appendix to the Petition are referred to as "Pet.'s App. at __."

2. Citations to the district court record in this opposition are referred to as "R. at __."

Circuit" and "failed to take into account case law from the Fifth Circuit that held that the dismissal of a party's case is a severe remedy warranted only when drastic circumstances exist." (Pet. at 13.) The district court, in denying James' motion, held:

> What is relevant to this dispute is that James—whether through her own error or her lawyer's—repeatedly disobeyed the court's orders.

(Pet.'s App. at B.) This is entirely consistent with the Fifth Circuit holding in *Crutcher v. Aetna Life Ins. Co.*, 746 F.2d 1076, 1083 (5th Cir. 1984) (holding that the purpose of Rule 60(b) "is not to give relief to the client who does not choose the best lawyer for the job. Our cases liberally construing Rule 60(b) focus upon the abandonment of clients by their lawyers, not upon clients who lose.")

CONCLUSION

This case presents no issue worthy of the Court's attention. The petition for writ of certiorari should be denied.

Respectfully submitted,

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